

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2008-360-S

IN RE:)
)
Happy Rabbit, LP on behalf of Windridge,)
Townhomes,)
)
Complainant)
)
v.)
)
Alpine Utilities, Inc.,)
)
Defendant.)
_____)

**MOTION FOR
PROTECTIVE ORDER**

Alpine Utilities, Inc. (“Alpine” or “the Company”) hereby moves this Honorable Commission, pursuant to 26 S.C. Code Ann. Regs. RR. 103-829.A and 103-833.A and B (Supp. 2008), for a protective order holding in abeyance the Parties’ obligation to participate in discovery in the above-captioned docket. In support thereof, Alpine would respectfully show as follows:

1. On March 13, 2009, Happy Rabbit, LP (“Happy Rabbit” or “Complainant”) submitted its Second Set of Requests for Admissions to Alpine. Subsequently, Happy Rabbit submitted its Third Set of Interrogatories and Third Set of Requests for Production¹ to Alpine on March 23 and March 24, 2009, respectively. Pursuant to 26 S.C. Code Ann. Regs. R. 103-833.A and

¹ Although Happy Rabbit has styled its most recent Request for Production as the “Third Set,” Alpine is not in receipt of any discovery request from Happy Rabbit identified as a “Second Set of Requests for Production.”

B (Supp. 2008) and Rule 36(a), South Carolina Rules of Civil Procedure, the responses to the pending discovery requests are currently due on April 13, 2009.

2. On or about October 24, 2008, Alpine filed with the Commission a Motion to Dismiss which was ordered by the Commission to be held in abeyance until the hearing then scheduled in this matter for March 10, 2009. See Order No. 2008-854, dated January 8, 2009. Subsequently, on or about February 25, 2009, Happy Rabbit requested, and the Hearing Officer granted, a continuance in the hearing which, as of the date of this filing, has not been rescheduled. On March 31, 2009, Alpine filed a Motion for Summary Judgment of this matter. In both motions, Alpine has asserted that any action which can arise under § 27-33-50 is not properly before this Commission and that the Commission does not have jurisdiction over this matter.

3. On April 1, 2009, the South Carolina Office of Regulatory Staff (“ORS”) submitted a letter of the same date (“ORS Letter”) to the Commission. Therein, ORS advised the Commission that:

- a) Whether the utility has violated § 27-33-50 as alleged by Happy Rabbit in this proceeding is a matter for Circuit Court and is not a violation of the Commission’s rules and regulations;
- b) No allegation has been made that the rates charged were not the tariffed rates approved by the Commission, such that R. 103.533(3) is implicated; and
- c) ORS recommends that the Commission dismiss without prejudice the instant Complaint and an undocketed complaint filed on behalf of Carolyn C. Cook and allow the complainants to move forward with their action in Circuit Court.

4. Alpine submits that the arguments set forth in its Motions and the ORS Letter support Alpine’s contention that this matter should be dismissed by the Commission for lack of jurisdiction.

5. Alpine submits that it should be relieved from responding to any pending discovery requests of Happy Rabbit in view of the foregoing until such time as the Commission has addressed the pending motions on the merits. Alpine believes that such a protective order issued by the Commission is warranted and appropriate inasmuch as Alpine has already incurred considerable expenses in defending this proceeding which will necessarily be borne by all of Alpine's customers in its next rate proceeding. In light of the positions of the parties in this matter, it would, therefore, be unreasonable and contrary to the public interest to require it to incur additional expenses to respond to discovery requests in a proceeding which may ultimately be dismissed.

WHEREFORE, Alpine respectfully requests that the Commission consider this matter on an expedited basis and issue a protective order with respect to further participating in discovery in the above-captioned matter and grant to Alpine such other and further relief as the Commission may deem just and proper.

s/Benjamin P. Mustian
John M.S. Hoefer
Benjamin P. Mustian
WILLOUGHBY & HOEFER, P.A.
Post Office Box 8416
Columbia, South Carolina 29202-8416
803-252-3300
Attorneys for Defendant

Columbia, South Carolina
This 2nd day of April, 2009